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No. 7766

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United States  
**Circuit Court of Appeals**  
For the Ninth Circuit

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THE COUNTY OF MARICOPA, STATE OF  
ARIZONA,

Appellant.

vs.

OLIVIA ROSEVEARE,

Appellee.

APPELLANT'S SUPPLEMENTAL BRIEF

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*Upon Appeal from the United States District Court  
for the District of Arizona.*

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HARRY JOHNSON,  
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JOHN L. SULLIVAN,  
Attorney General,

DUDLEY W. WINDES,  
Assistant Attorney General,  
Of Counsel.

**FILED**

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DEC - 9 1935

PAUL P. O'BRIEN



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APPELLANT'S SUPPLEMENTAL BRIEF

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Since filing appellant's brief in this case, the Supreme Court of Arizona has rendered its decision in the case of

*Maricopa County vs. Hodgin*

50 Pac. 2nd 15 (Advance Sheet of Nov. 22,  
1935)

in which it is held that money received by the County Treasurer in payment of wrongfully levied taxes when paid under protest do not become trust funds in the hands of the Treasurer, and a judgment recovered by a taxpayer for such payments must be collected in the same manner as other claims. In this case the Court said:

“The trial court treated the taxes paid by Hodgin under protest as a trust fund and not as tax money belonging to the county or the taxing units for which it was collected. There is as much statutory authority to treat taxes paid without protest as trust funds as there is to so treat taxes paid under protest. A careful examination of our revenue laws fails to disclose any intention on the part of the Legislative to have the protested tax under Section 55, *supra*, treated or handled any different from taxes willingly paid. The receipt issued for the taxes is the same in both cases. After collection, they are kept by the same custodian, are apportioned and paid out, or disposed of without distinction.

“While the exemptions to persons falling within the classifications in section 2, article 9, of the Constitution and subdivision 4, § 3066, Revised Code of 1928, as we said in the Calhoun Case, *supra*, are absolute, the mode and manner of protecting and securing that right is left with the Legislature. Section 11, article 9, of the Constitution reads: ‘The manner, method and mode of assessing, equalizing and levying taxes in the State of Arizona shall be such as may be prescribed by law.’ The Legislature has prescribed when and how the exemption may be presented and proved. Chapter 91, Sess. Laws 1929. It had the right to do this. The Legislature also has the right to require one who has not pursued the method prescribed to pay his

taxes before he may litigate the question of his right to the exemption. It could have provided, had it seen fit, that the taxes should be held intact and disposed of in accordance with the result of the litigation, but it rather chose to treat the taxes as belonging to the county and the taxpayer as a judgment creditor, to be repaid as other judgment creditors."

This case, we believe, is conclusive on the question as to whether or not taxes paid under protest to a county treasurer in Arizona can be considered as trust funds under the well known rule of law that Federal courts will follow the decisions of the highest court of a state relating to constructions of its constitution and statutes.

Respectfully submitted,

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